

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
GRAND FORKS WIRELESS, L.L.C.
Petition for Special Relief Requesting a Finding
Of Effective Competition in Various North
Dakota Communities

MEMORANDUM OPINION AND ORDER

Adopted: January 8, 2002

Released: January 9, 2002

By the Deputy Chief, Cable Services Bureau:

1. Grand Forks Wireless, L.L.C. ("Grand Forks") filed a Petition for Special Relief requesting a finding of effective competition in various North Dakota communities (the "Communities") in conjunction with its showing of compliance with Section 21.912 of the Commission's rules. Grand Fork's petition is unopposed.

2. The Communications Act and the Commission's rules provide that only the rates of cable systems that are not subject to effective competition may be regulated. One of the bases by which a cable system will be deemed subject to effective competition is where a franchise area is: (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition. The cable operator bears the burden of rebutting the presumption that effective competition does not exist

1See 47 C.F.R. § 76.7; Application of Grand Forks Wireless, L.L.C. to Transfer Control of MMDS Station Licenses to Polar Communications.

2The Communities are: Michigan, Petersburg, Adams, Fordville, Park River, Crystal, Edinburg, Hensel, Cavalier, Mountain, Neche, St. Thomas, Osnabrock, Pisek, and Hoople, North Dakota.

347 C.F.R. § 21.912. Petitioners must file for special relief pursuant to Section 76.7 when demonstrating compliance with Section 21.912 based on the effective competition exception to Section 21.912. See Letter dated January 21, 1998 from Roy J. Stewart, Chief, Mass Media Bureau to Charles G. Cline, Kenneth W. Garrard, BellSouth Wireless Cable, Inc. and BellSouth Corporation (File Nos. 50849-CM-AL(1)-97 and 50851-CM-AL(2)-97).

447 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

547 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.906(b)(2).

647 C.F.R. § 76.906.

with evidence that effective competition, as defined by Section 76.905 of the Commission's rules, is present within its franchise area.<sup>7</sup> Grand Forks has met this burden.

3. Grand Forks has submitted reliable evidence demonstrating that the Communities are served by at least two unaffiliated multichannel video programming distributors ("MVPDs") offering comparable service to more than 50% of the households therein. Grand Forks asserts that the service of direct broadcast satellite providers satisfy this requirement.<sup>8</sup> In addition Grand Forks asserts that the facilities of Polar Communications serving the Communities pass nearly 100% of the households therein.<sup>9</sup> We therefore find that Grand Forks has submitted sufficient evidence to satisfy the first prong of the competing provider test.

4. Grand Forks has also submitted sufficient evidence demonstrating that the number of households subscribing to MVPDs other than the largest MVPD exceeds 15% of the households in all of the franchise areas. Relying on its subscribership information obtained from Polar and DBS subscribership reports obtained from SKYTrends, a media research reporting and consulting firm, Grand Forks submits evidence that the aggregate subscribership to DBS service in the Communities exceeds 15% of the households in each franchise area.<sup>10</sup> Although Grand Forks does not indicate which MVPD in each franchise area is the largest MVPD; we are, nevertheless, able to conclude that competing provider effective competition exists in each of the Communities. Assuming that Polar is the largest MVPD in each community, the aggregate DBS subscribership in each community easily surpasses the 15% threshold.<sup>11</sup> Conversely, assuming that a DBS provider is the largest MVPD in each of the Communities, Polar's subscribership in each community by itself surpasses the 15% threshold of the second prong of the competing provider test.<sup>12</sup> We find that Grand Forks has submitted sufficient evidence to satisfy the second prong of the competing provider test, thereby establishing the presence of effective competition in the Communities.

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<sup>7</sup>47 C.F.R. § 76.911(b)(1).

<sup>8</sup>Petition at 1. See *Time Warner Entertainment – Advance/Newhouse Partnership d/b/a Time Warner Communications*, 15 FCC Rcd 8852, 8854 (CSB 2000); *Jones Intercable, Inc.*, 15 FCC Rcd 7257, 7258 (CSB 2000).

<sup>9</sup>Petition at 1.

<sup>10</sup>*Id.* at 2. The precise DBS penetration rate for each franchise area is set forth on Attachment A.

<sup>11</sup> See Attachment A.

<sup>12</sup> *Id.*

5. Accordingly, **IT IS ORDERED** that the petition for special relief requesting a finding of effective competition in the Communities filed by Grand Forks Wireless L.L.C. **IS GRANTED**.

6. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.<sup>13</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>13</sup>47 C.F.R. § 0.321.

## Attachment A

**Percentage of Households in the Communities  
Subscribing to MVPDs Other than the Largest MVPD**

<b><u>Community</u></b>	<b><u>Polar % of Households</u></b>	<b><u>DBS % of Households</u></b>
1. Michigan	46%	52%
2. Petersburg	45%	32%
3. Adams	33%	38%
4. Fordville	39%	29%
5. Park River	74%	18%
6. Crystal	47%	30%
7. Edinburg	42%	26%
8. Hensel	16%	49%
9. Cavalier	68%	17%
10. Mountain	67%	33%
11. Neche	34%	29%
12. St. Thomas	50%	35%
13. Osnabrock	33%	41%
14. Pisek	36%	34%
15. Hoople	39%	32%